Morris, Craig

From: Christy Prunier (b)(6)
Sent: Monday, February 07, 2011 10:24 PM
To: TMFeedback
Cc: (b)(6) ; Christy Prunier
Subject: SMALL BUSINESS STUDY

March 17, 2010. Pub. L. No. 111-146, 124 Stat. 66 (2010). The Act includes a provision that the Secretary of Commerce, in consultation with the Intellectual Property Enforcement Coordinator, shall conduct a study and report to the Committees on the Judiciary of the House and Senate on "(1) the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner; and (2) the best use of Federal Government services to protect trademarks and prevent counterfeiting." Trademark Technical and Conforming Amendment Act § 4. The study and report shall also include any policy recommendations deemed appropriate.

In connection with the study, the USPTO is requesting feedback from U.S. trademark owners, practitioners, and others regarding their experiences with litigation tactics, especially those involving an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner. The USPTO also is eliciting suggestions to address any allegedly problematic litigation tactics.

Please send your response to the following questions, or any additional comments, to TMFeedback@uspto.gov, with the subject line "Small Business Study." In order to ensure that your feedback may be considered, please submit it no later than January 7, 2011. Although the USPTO would find it most beneficial to receive responses to every item, you may answer all or any portion of the following questions.

1. Please identify whether you are a trademark owner or practitioner, and the general size and nature of your business or trademark practice, including the number of trademark applications and registrations your business has, or your practice handles. Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner.

My name is Christy Prunier. I am an entrepreneur who has spent the past 2 ½ years painstakingly developing a natural skincare line for tween girls with my daughter Willa. I began this company with Willa and Francesca Harrell who has since moved abroad and though she is still involved with art-work and design and brand development I am essentially a company of one here in New York. I have 5 approved TMs with the USPTO that have already gone through the Opposition period without any objection, two pending, and all 7 marks under the WILLA umbrella are now being contested by WELLA--part of Procter & Gamble company. To be clear, we have developed over a dozen skincare skus -- the core 6 launch skus recently passed stability and compatibility testing. FDA testing on the SPF products begins in March and the non-SPF products begin production March 1.

2. In approximately the last 5 years, please describe any instances of which you have first-hand knowledge where a small business may have been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner.

(See below after #3 where I am combining my answers)

3. Please describe situations where you have been involved in receiving a cease-and-desist letter. Anecdotal information might include, but is not limited to, a description of whether the letter resulted in the small business ceasing its use of one or more marks, or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against the small business owner.

On January 31 2011, I received a cease and desist letter from Procter and Gamble attorneys threatening " lengthy expensive" legal action if I did not withdraw ALL my approved WILLA TM. They claim there could be confusion between WELLA TM and logo and WILLA TM and logo. At WILLA we are launching a company specifically focused on the skincare needs of Tween girls. And the Trademark Office did not find any likelihood of confusion even with the hair care products listed in my application. I received no confusion objection from the Trademark Office in any of the pplications.

I chose the name "WILLA" because it is my daughter's name--and as importantly it was her idea two years ago at age 8 to start a skincare line to meet the specific needs of girls her age. My daughter Willa and I developed our logo with her then babysitter Francesca Harrell who was a student at Parsons School of Design. The final logo is the result of years of thought and endless revisions as well as focus groups with Willa and dozens of her classmates at her school where she is currently in the fifth grade.

You see the mark WILLA is intensely personal reflecting the name of the originator of the brand and the girl in the cameo conveys our very distinct and personal vision.

4. Please describe situations where you have been involved in trademark litigation in state or federal courts. Anecdotal information might include, but is not limited to, a description of whether the lawsuit settled on the basis of the small business agreeing to cease its use of one or more marks, or on the basis of the plaintiff withdrawing or abandoning its trademark-related allegation(s). Alternatively, relevant information might include whether such lawsuits resulted in a court judgment and the nature of the judgment (such as requiring the small business to cease its use of one or more marks, assessing monetary liability (damages, lost profits, or attorneys' fees) against the small business, requiring the plaintiff to pay the defendant's attorneys' fees, or imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure).

As of today, February 7th 2011 I have not been involved in trademark litigation in any courts. P&G has imposed a deadline of February 11th2011 for me to respond to their cease and desist letter. They never filed any opposition to any of my five approved marks and are giving me just ten days to totally abandon the key mark for my products.

5. Please describe situations where you have been involved in opposition/cancellation proceedings instituted at the USPTO against small business owners. Anecdotal information might include, but is not limited to, a description of whether the proceedings settled on the basis of the small business agreeing to abandon its application(s) for one or more marks, or whether the proceedings settled on the basis of the plaintiff withdrawing or abandoning its notice of opposition or cancellation petition. Alternatively, relevant information might include a description of whether such proceedings resulted in a decision by the USPTO Trademark Trial and Appeal Board ("TTAB") refusing to register/canceling one or more marks owned by the small business, or whether such proceedings resulted in the TTAB imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure.

N/A

6. Do you think trademark "bullies"[1] are currently a problem for trademark owners, and if so, how significant is the problem?

I can only speak from my experience with P & G. TM bullies like P&G are a problem not only for trademark owners but also for entrepreneurs and emerging businesses and ultimately economic growth and innovation in the United States. Most entrepreneurs like myself have limited financial resources when they launch a start-up. Through sweat and home equity loans over the past two years I have built up a skincare company to serve the unmet needs of young girls at the age when they can best protect their skin from future damage. I developed this company with inspiration and help from my daughter Willa because I didn't want her and other tween girls to repeat my history of youthful skincare neglect. For me, the result was the emotional trauma of horrific acne in my teenage years as well as multiple skin cancers. There are still no gentle, safe and fun skincare products on the market serving the specific needs of girls her age.

What's more and I would also argue the lives of all Americans are compromised by TM bullies. Innovation to improve all our lives is diminished when multi-billion dollar global companies exploit their financial might to crush potential competition through threats of costly (and specious) litigation.

Procter & Gamble—the dominant player in the personal care space has unlimited means to wipe out any upstart brands through aggressive and costly litigation, however unfounded. They rightly suspect as an individual I could never afford to pay the tremendous legal fees needed to defend my TM--and as great as my products are--it is the sophisticated but whimsical brand image and packaging we've spent two years developing that is critical to any commercial success.

7. Do you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the law?

I'm not a lawyer and don't have that overview to comment.

8. Do you think the USPTO has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should the USPTO do?

I see two options:

First, marks approved by the USPTO should be considered conclusive. The fact is WILLA *was* approved –with no opposition- -and yet we are still at risk of losing our TM because I don't have the financial means to take on a mulit-billion dollar personal care company. (The timing of P&G's cease and desist letter is suspicious given it came weeks after Walmart announced it was launching GeoGirl girl's tween skincare line. In the numerous stories that have appeared in WSJ among other publications, Walmart acknowledged tween beauty category as virtual "white space" and this demo to have billions in spending power.

That P&G can come after me long after the opposition and approval period of the TM process makes the TM approval seem meaningless.

Second: There should be a pro bono or TM resource for entrepreneurs like me to harness the legal muscle critical to defending ourselves against trademark bullies. I paid substantial legal fees to the Trademark Office and need an inexpensive forum for their protection.

There should also be transparency so P & G and other corporate bullies cannot smother fledgling companies outside of public view. All hearings should be made public to make sure that multi billion dollar companies think twice about the costs (PR) for taking on entrepreneurs unfairly.

9. Do you think the U.S. courts have a responsibility to do something to discourage trademark bullies? If yes, what should the U.S. courts do?

Yes, they should do everything they can to recognize and deal with trademark bullies.

10. What other U.S. agencies may have a responsibility to do something about the problem?

This impacts commerce/financial growth so not sure the other agencies. The Federal Trade Commission, Main Justice and Antitrust Division should look into the fraudulent, extortionist and anti-competitive aspects of this type of behavior.

11. Do you think Congress has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should Congress do?

Absolutely. Congress makes the laws. Congress should conduct an investigation and hold hearings on this issue and, based on the results of its investigation and hearings, pass appropriate legislation to prevent this kind of conduct from occurring.

12. Please provide any other comments you may have.

By way of background, WILLA began 2 1/2 years ago with one of those quiet but extraordinary moments

between a Mom and her daughter.

I was giving my daughter Willa a bath. She was eight and she said, "Mommy, I don't like this J&J soap. It's for babies. Isn't there anything for girls my age?"

It really struck a nerve. What was there for her? Not just marketing stuff-- but good, safe...something she wouldn't squint putting on her face. It was a moment when I paused for what seemed a lifetime.

I immediately thought of my own tween and teenage years fraught with acne, too much sun and no skincare routine. The emotional trauma of bad skin in my youth coupled with 4 facial skin cancers in my 20s and 30s and untold thousands of dollars trying to reverse skin damage has made me determined that my daughter Willa would not repeat my story.

So we looked for skincare products that were gentle, safe and fun---products developed with a dermatologist that were developed for the particular needs of 7-14 girls. We found nothing--not in the mass drugstores, not in the high-end drugstores, not in department stores--they just didn't exist.... with the exception of Miley Cyrus pink, chemical products made in China.

Thanks to Willa expressing a desire to take ownership of her skincare, I set about dedicating all my time and resources ($100k home equity loan and family loans) to giving girls a line of skincare products that were natural, smelled clean, would protect their skin and most importantly, their mom's would trust.

Over the past few years I have been working with Cosmetic Essence Innovations one of the best emulsions labs in the country on a line of skincare products that empower girls to take ownership of their skincare routine.... with fresh smelling products that feel great, fortify their skin with Chemical free SPF, green tea anti-oxidants and moisturizing serums and lotions that feel so good reapplication becomes second nature.

And so having come so far. Due to begin production March 1, you can imagine how devastating receiving a letter from P&G lawyers indicating how "expensive" it will become if I don't cease and desist use of all WILLA marks. There have been so many moments along the way where I've wanted to give up but I believe in the importance of WILLA in the lives of girls. The integrity of our product is intimately tied to our brand name and ogo which reflects the very unique and pure mission of a girl named "Willa."

I think the approach that has been taken by this new Legislation is a good one and I would be happy to appear and testify on this issue.

Respectfully,

Christy Prunier

--
Christy Prunier
(b)(6)